

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 328 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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ABBASBHAI GULAM MOHMED

Versus

VAIDYA DAYANIDHI AMILAL SHARMA  
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Appearance:

MS SADHANA SAGAR for Petitioner

MR JT TRIVEDI for Respondent  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/02/2000

ORAL JUDGEMENT

This is a revision under Sec.29(2) of the Bombay  
Rent Act against concurrent judgment and decree of the  
courts below directing eviction of the revisionist and  
also granting decree for arrears of rent and mesne  
profits.

2. The revisionist was a tenant of the disputed premises on monthly rent of Rs.10/-. It was alleged by the landlord respondent that the revisionist did not pay rent since 1-9-1975. Notice of demand etc. was sent to the revisionist by registered post which was refused by him and after refusal of notice, the rent was not paid within a month of refusal of the notice. Consequently, the suit for eviction, recovery of arrears of rent and mesne profits was filed against the revisionist.

3. The revisionist, in his written statement, pleaded that he was regular in payment of rent. There was request of the landlord -respondent that as and when he would require large amount from the revisionist, he would accept the same and adjust the same towards the rent. It was on this request of the landlord -respondent that the rent could not be paid regularly by the revisionist. It has also been pleaded that the rent was deposited in the court.

4. Disbelieving the defence version, the trial court decreed the suit. The appellate court also repelled the contentions of the appellant who is revisionist before me and dismissed the appeal. It is, therefore, this revision.

5. The first point for consideration is whether the notice was served on the revisionist. There is categorical finding recorded by the appellate court based on the evidence on record that the notice was sent by registered post at the correct address of the revisionist and it has been returned with postal endorsement of refusal. The presumption was, therefore, rightly drawn by the appellate court and for rebutting this presumption, neither the revisionist adduced any evidence, nor did he plead any special facts or circumstances on which it can be believed that the notice was not refused by him. If the notice was sent at the correct address of the addressee, and it was returned with postal endorsement of refusal, a presumption can be drawn in favour of sufficient service of notice by refusal. The appellate court, therefore, committed no illegality in holding that the service of notice was sufficient.

6. The second point for consideration is whether the notice is invalid. The finding of the appellate court is that the notice was in accordance with law. No specific illegality was alleged, hence the finding of the appellate court, in my opinion, does not suffer from any

illegality.

7. On the point of arrears of rent, even if for a moment revisionist's version is accepted that the landlord assured the revisionist that as and when he would require large sum, he would accept the same from the revisionist, still it is admitted by the revisionist that more than six months rent was due from him when the notice was allegedly refused by him. The revisionist pleaded that a sum of Rs.75/- was remitted towards rent by Money Order but the Money Order was refused by the landlord. The appellate court has accepted the version of the revisionist. The appellate court still found that even if the refusal of Money Order of Rs.75/- is taken into consideration, it would amount to making payment of seven and a half months rent and still about 22 to 23 months rent would remain due. The rent is due since 1-9-1975. Further no rent was remitted by Money Order by the revisionist after refusal of notice to the landlord. No payment of rent was made nor did he tender the rent within a month of service of notice of demand by refusal. The revisionist did not raise any dispute regarding the standard rent. It was a case where the rent was payable monthly. Consequently on such established and admitted facts, the case was covered by Sec.12(3)(a) of the Bombay Rent Act and the lower court had rightly concluded from the evidence on record and the circumstances of the case that the plea of the tenant that he was ready and willing to pay the rent is not acceptable. On these facts, the provisions of Sec.12(3)(a) of the Bombay Rent Act are fully attracted. If the provisions of Sec.12(3)(a) of the Bombay Rent Act were attracted, the two courts below had no alternative but to decree the suit for eviction. Consequently, the decree for arrears of rent could also, in the facts and circumstances of the case, be passed by the two courts below, so also the decree for mesne profits.

8. The revisionist also took a stand before the appellate court that he was entitled to the protection under Sec.12(3)(b) of the Bombay Rent Act. The provisions of Sec.12(3)(b) of the Bombay Rent Act could be attracted only to a case where the provisions of Sec.12(3)(a) of the Bombay Rent Act are not applicable. Since, in the facts and circumstances of the case, provisions of Sec.12(3)(a) were fully attracted, the case could not be placed within the ambit of Sec.12(3)(b) of the Bombay Rent Act. Still in the alternative, the appellate court found that compliance of provisions of Sec.12(3)(b) has not been made by the defendant revisionist. It has been found that the arrears of rent

etc. were not deposited on the first date of hearing in the trial court, nor was it deposited before the conclusion of hearing, and delivery of the judgment in the trial court. In the appellate court also, compliance of Sec.12(3)(b) was not made by the revisionist. Hence he was rightly held to be not entitled to the benefit under Sec.12(3)(b) of the Bombay Rent Act.

9. No other point is involved for adjudication in this revision. The judgments and decrees of the two courts below are in accordance with law, hence there is no merit in the revision. The revision application is hereby dismissed. No order as to costs.

Date: 25/2/2000. ----

ccshah